

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA,  
NORTHERN DIVISION**

**HAZEL M. ROBY, as Administratrix of  
the Estate of RONALD TYRONE  
ROBY, Deceased,**

**Plaintiff,**

**V.**

**BENTON EXPRESS, INC., et al,**

**Defendants.**

**CIVIL ACTION NO.: 2:05CV494-T**

**SUPPLEMENT TO DEFENDANT’S BRIEF IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Defendant, Benton Express, Inc., and hereby supplements its Brief in Support of Motion for Summary Judgment (Doc. No. 34) as follows:

1. When reviewing the records for the personal cell phone of Craig Stephens (see Exhibit 13 to Defendant's Brief in Support of Motion for Summary Judgment), it was discovered that Mr. Stephens had made three calls to his bank, Harvesters Credit Union, on Saturday, April 9, 2005. As a result of this discovery, a subpoena was issued to Harvesters Credit Union to obtain the records from Mr. Stephens' bank account to see what activity there had been during the time that he was missing.

2. The Credit Union's response to the subpoena was not received until after the deadline for Defendant to file its Motion for Summary Judgment. Accordingly, the bank records could not be made a part of Defendant's original summary judgment filings. Defendant now adds them to the summary judgment filings with this supplemental filing.

3. Beginning with one withdrawal in Pensacola on April 8, 2005, Craig Stephens made a total of 18 ATM withdrawals from his bank account from April 8 through April 11.

[Banking Records, copies of which are attached hereto as Exhibit 1]. The total amount of money withdrawn from his account (including ATM fees and overdraft charges) during that time was \$998.42. [Exhibit 1]. The account went from a positive balance of \$753.88 to being overdrawn by \$244.54. [Exhibit 1].

4. All 17 of the ATM withdrawals that occurred after Mr. Stephens arrived in the Atlanta area were made in Decatur, Georgia. [Exhibit 1].

5. From looking at maps, the Court can take judicial notice that the areas of Decatur where the ATM withdrawals were made were close to Interstate 20 exits approximately 10 miles east of downtown Atlanta. The Court may further take judicial notice that these areas of Decatur, Georgia, are located approximately 9 miles from Benton Express' Atlanta terminal located at 1045 S. River Industrial Boulevard. [Mapquest printout, attached hereto as Exhibit 2]. Furthermore, the ATM locations are in the opposite direction from the Atlanta Benton Express terminal than is Pensacola, Florida.

6. The bank records indicate that the ATM withdrawals were made at the following locations:

- Chapel Square, Decatur, Georgia
- 2501 Columbia Drive, Decatur, Georgia
- 2425 Columbia Drive, Decatur, Georgia (Columbia Chevron)
- 2381 Columbia Drive, Decatur, Georgia (Faith Business, Inc.)
- 2645 Wesley Chapel Road, Decatur, Georgia
- 3230 Panthersville Road, Decatur, Georgia

[Exhibit 1; Affidavit of Gregory A. Brockwell, attached hereto as Exhibit 3].

7. Defendant's counsel has not yet located the Chapel Square location where one of the 17 ATM withdrawals was made. However, counsel has visited the other 5 ATM locations and discovered that all of these 5 ATMs are located inside gas station convenience stores.

[Exhibit 3].

8. At least some of the gas station convenience stores where the ATM withdrawals were made also contain video gambling machines. [Exhibit 3].

9. It is undisputed that Craig Stephens' wallet did not contain any cash when it was recovered from the accident scene by the Montgomery Police Department. To be fair, Craig Stephens' widow claims that Mr. Stephens' ATM card was also missing from his wallet. [Deposition of Stephanie Stephens, transcript not yet available]. However, there is absolutely no evidence to suggest that the card was stolen--especially considering that the ATM withdrawals stopped when Craig Stephens died.

10. From this evidence, it is clear that, when he left the Atlanta terminal shortly after midnight on April 9, Craig Stephens immediately deviated from his route. Instead of driving southwest to Pensacola, Mr. Stephens drove northeast to Decatur. Once in Decatur, Mr. Stephens made 17 ATM withdrawals over the next couple of days. Combined with his withdrawal before leaving Pensacola on Friday, April 8, Mr. Stephens went through almost \$1,000.00 and significantly overdrew his account. While it may never be clear exactly what Mr. Stephens spent this money on, it is known that video gambling is at least a likely possibility.

11. In the end, it is not that significant how Mr. Stephens spent his money while hanging out in Decatur. Rather, the most relevant things the evidence tells us is that Mr. Stephens clearly deviated from his route in both geography and time. Whatever he did with the money, Mr. Stephens certainly was not furthering the interests of Benton Express with it. Thus, the banking records give additional support to the fact that Mr. Stephens abandoned and deviated from his employment for purely personal reasons.

Respectfully submitted,

s/ Gregory A. Brockwell  
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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following on this the 16th day of December, 2005:

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